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EX PARTE OR LATE FILED

January 24, 2002

Via Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED

JAN 24 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: SBC Merger Conditions Examination, CC Docket No. 98-141

Dear Ms. Salas:

Today, CompTel sent the attached letter to Dorothy Attwood, Chief of the Common Carrier Bureau, and David Solomon, Chief of the Enforcement Bureau. The letter describes violations by SBC Communications, Inc. of Merger Conditions imposed by the Federal Communications Commission in the aforementioned docket.

Please contact the undersigned at 202-296-6650 if you have any questions about this filing.

Sincerely,

A handwritten signature in black ink, appearing to read "Maureen Flood".

Maureen Flood
Director, Regulatory and State Affairs

enclosures

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January 24, 2002

Via Courier

Ms. Dorothy Attwood
Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Mr. David Solomon
Chief
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: SBC Merger Conditions Examination, CC Docket No. 98-141

Dear Ms. Attwood and Mr. Solomon:

On behalf of the Competitive Telecommunications Association ("CompTel") and Advanced TelCom Group, Inc. ("ATG"), I am writing to request that the Federal Communications Commission ("Commission") impose forfeitures on SBC Communications, Inc. for failing to comply with the Commission's SBC/Ameritech Merger Order and Conditions.¹ Specifically, SBC has failed to: (1) comply with the Carrier-to-Carrier Performance Plan; (2) provide promotional discounts to other telecommunications carriers; and (3) comply with the Commission's collocation rules.

The Merger Order requires SBC to retain an independent auditor to "conduct an annual audit to provide a thorough and systematic evaluation of SBC/Ameritech's compliance with the conditions and the sufficiency of SBC/Ameritech's internal

¹ Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules, CC Docket 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14,712 (1999) ("Merger Order") and Attachment C ("Merger Conditions").

controls.”² More specifically, the Merger Order requires the independent auditor to use the “examination engagement” method to evaluate SBC’s compliance with the Merger Conditions, and to issue a “positive opinion” (with exceptions noted) in its final report.³ The results of this examination, which were filed with the Commission on September 4, 2001, revealed instances of material noncompliance with the Merger Order and Conditions that are described more fully below.⁴

SBC’s repeated violations of the Merger Order and Conditions⁵ and the FCC’s rules implementing the Telecommunications Act of 1996 have caused grave harm to the development of competition for local telecommunications services. Indeed, the FCC imposed conditions on the SBC/Ameritech merger because it was concerned that the transaction on its face would harm both consumers and competitors:

We believe that the Applicants’ package of conditions, with the modifications by this Commission, alters the public interest balance of the proposed merger by mitigating substantially the potential public interest harms while providing additional public interest benefit. Accordingly, with the full panoply of conditions that we adopt in this Order, and *assuming the Applicants’ ongoing compliance with these conditions*, we find that the Applicants have demonstrated that the proposed transfer of licenses and lines from Ameritech to SBC will serve the public interest, convenience and necessity.⁶ (emphasis added)

Given that the SBC/Ameritech merger would not be in the public interest but for SBC’s promise to comply with the Merger Conditions, it is clear that SBC’s continuing non-compliance has deprived consumers and other carriers of the public interest benefits that should have resulted from the transaction. Simply stated, the SBC/Ameritech merger is not in the public interest unless SBC complies with the Merger Conditions, which according to the Merger Conditions Examination, it is not. CompTel and ATG urge the Enforcement Bureau to take swift and meaningful enforcement action to protect competitors from SBC’s increased incentive and ability to discriminate, and enjoy the pro-competition benefits that were supposed to flow from the Merger Conditions.

² *Id.* at ¶ 410.

³ *Id.* at ¶ 411.

⁴ Ernst & Young, LLP, Report of Independent Accountants (dated September 4, 2001) (“Merger Conditions Examination”).

⁵ See, for example, In the Matter of SBC Communications, Inc. Apparent Liability for Forfeiture, File No. EB-00-IH-0326a, released May 24, 2001. (“Collocation Forfeiture Order”); In the Matter of SBC Communications, Inc. Apparent Liability for Forfeiture, File No. EB-00-IH-0432, released May 29, 2001. (“Performance Metrics Forfeiture Order”); In the Matter of SBC Communications, Inc. Apparent Liability for Forfeiture, File No. EB-01-1H-0300, released January 18, 2002 (“Shared Transport Forfeiture NAL”).

⁶ Merger Order at ¶ 349.

Carrier-to-Carrier Discounts

The Merger Conditions Examination found that SBC did not provide promotional discounts to telecommunications carriers for: (1) unbundled loops used to provide advanced services (Condition 3); (2) unbundled loops used to provide telecommunications services to residential customers (Condition 14); and (3) resold telecommunications services for residential customers (Condition 15).⁷ SBC's noncompliance with Merger Conditions 3, 14, and 15 falls into two general categories—delay in the application of bill credits and failure to provide the required discounts.⁸

For example, the Merger Conditions Examination states that SBC did not provide discounts on eligible CLEC orders of Integrated Digital Network Subscriber Line ("IDSL"), as required by Condition 3, in the Pacific Bell and Nevada Bell regions. Pursuant to the Merger Conditions, SBC must offer CLECs a 25 percent discount from the recurring and nonrecurring charges for unbundled loops used in the provision of advanced services until SBC has developed and deployed certain advanced services OSS enhancements, interfaces, and business requirements.

ATG first asked Pacific Bell to provide the applicable discount to its unbundled IDSL loops in July 2000. As described in the attached declaration of Chris Gilbert, Director of Cost Assurance for ATG, Pacific Bell responded that IDSL-capable loops are not eligible for the 25 percent discount required by Condition 3. Indeed, Pacific Bell has yet to provide ATG with the required 25 percent discount on the recurring and non-recurring charges for unbundled IDSL loops, totaling more than \$48,000 for the period June 2000 through October 2001. Further, Nevada Bell also rejected ATG's request to apply the promotional discount to IDSL loops, and owes ATG approximately \$14,000 for the period September 2000 through October 2001.⁹

As a general matter, SBC's failure to provide competing carriers with the discounts to which they are entitled under the Merger Conditions in a timely manner effectively provides SBC an extended, no-interest loan to the detriment of competing carriers. More importantly, SBC's failure to provide CLECs such as ATG with bill credits on unbundled IDSL loops undermines the purpose of the promotional discount imposed by Condition 3, which was to "compensate other carriers for the unenhanced OSS and to provide SBC/Ameritech with an incentive to improve the systems and processes as quickly as possible."¹⁰ Clearly, SBC has little incentive to improve its advanced services OSS if it can withhold the promotional discount on unbundled loops used to provide advanced services. Without this discount, SBC's affiliates maintain a competitive advantage over non-affiliated carriers, since they have access to superior advanced services OSS but pay the same rate for unbundled loops.

⁷ Merger Conditions Examination, page 3.

⁸ Report of Management on Compliance With the Merger Conditions, Conditions 3, 14 and 15, September 4, 2001.

⁹ Gilbert Declaration at ¶ 6.

¹⁰ Merger Order at ¶ 372.

CompTel and ATG are not reassured by SBC's assertion that "the Company has taken corrective action where needed to provide future discounts correctly and is completing the issuance of discounts and appropriate interest retroactively."¹¹ As described in the Gilbert declaration, *SBC still disputes that unbundled IDSL loops are eligible for the 25 percent promotional discount required by Condition 3*. Indeed, it is important to note that SBC's assertion that these discounts *will be* retroactively applied was made on September 4, 2001, approximately *nine months* after the end of the audit period (January 2000-December 2000).¹²

Collocation

According to the Merger Conditions Examination, SBC failed to comply with the Commission's collocation rules. First, SBC did not comply with 47 CFR § 51.321(h), which requires the company to maintain a public document on its Internet web site listing all premises that are full, and to update this document within 10 days of the date upon which a premise runs out of physical collocation space.¹³ Instead, SBC only posted a notice on its Internet web site when, through the normal course of business, it would discover that collocation space in a premise had been exhausted.¹⁴

In May, the FCC's Enforcement Bureau fined SBC \$94,500 for failing to comply with this rule.¹⁵ The Enforcement Bureau found that the Internet posting requirement is triggered as soon as the physical collocation space in a premise is exhausted. More specifically, the Enforcement Bureau's Collocation Forfeiture Order found:

SBC's approach conflicts with the stated purposes of the rule, to 'allow competitors to avoid expending significant resources in applying for collocation space in an incumbent LEC's premises where no such space exists.' By waiting until it denies an application, SBC in each instance causes at least one competitive local exchange carrier (CLEC) to waste time and resources on an application.¹⁶

In June 2000, ATG submitted a collocation application for Pacific Bell's Bishop Ranch central office with a \$6,093.87 application fee.¹⁷ Prior to filing the application, ATG consulted SBC's Internet web site to determine whether collocation space was available. According to SBC's web site, the Bishop Ranch central office was not full. However, on June 18, 2000 Pacific Bell rejected ATG's application. According to

¹¹ Report of Management on Compliance With the Merger Conditions, September 4, 2001, page 3.

¹² *Id.*

¹³ Merger Conditions Examination, page 5.

¹⁴ *Id.*

¹⁵ In the Matter of SBC Communications, Inc. Apparent Liability for Forfeiture, File No. EB-00-IH-0326a, released May 24, 2001. ("May 2001 Forfeiture Order") This forfeiture was based on an earlier audit of SBC's collocation practices, which covered the period October 8, 1999 through June 8, 2000. See Ernst & Young LLP, *Report of Independent Accountants*, August 8, 2000. ("Collocation Examination")

¹⁶ *Id.* at ¶ 6. (footnote omitted)

¹⁷ Declaration of Louie Ruiloba, Collocation Engineer for ATG.

Pacific Bell, not only was physical collocation space exhausted in the Bishop Ranch central office, it had been so for some time and SBC maintained a waiting list of CLECs that were trying to obtain space.

More than one year ago, ATG sent a letter to the Enforcement Bureau concerning identical violations that were revealed by the Collocation Examination required by Condition XI.¹⁸ According to ATG's letter, "SBC's outright violation of Rule 53.321(h) places competitors at a competitive disadvantage by requiring them to expend time and money to obtain information that should be readily available on SBC incumbent LECs' Internet sites." Unfortunately, SBC's noncompliance with the Commission's collocation rules continue to plague CLECs and the Enforcement Bureau's \$94,500 penalty was a mere slap on the wrist. CompTel and ATG are not reassured by SBC's assurances that it now posts notice of a central office closing within 10 days of a collocation request or space assignment that would exhaust the collocation space at that central office.¹⁹ As described in the Ruiloba declaration, SBC still has not listed the Bishop Ranch central office as exhausted, more than 18 months after ATG first learned that it was full.

Second, the Merger Conditions Examination uncovered several instances where SBC over-billed and under-billed collocation charges to affiliated and nonaffiliated carriers for both the recurring and nonrecurring charges.²⁰ For example, ATG has been over-billed \$347.16 per month since July 2000 for collocation space in Nevada Bell's Sparks central office.²¹ ATG notified SBC of this billing problem in July 2001. To date, SBC continues to over-bill ATG for collocation space, and SBC has not refunded ATG's collocation charges, which total \$4,513.04. ATG's commercial experience with SBC is in direct conflict with the company's September report to the FCC concerning its compliance with the Merger Conditions, which states that SBC has "implemented corrective action where needed to provide future billing correctly, and has or will issue appropriate adjustments."²² Given the state of the nation's capital markets, carriers such as ATG cannot afford to overpay SBC for collocation space; their limited resources are best spent serving customers, not supporting the incumbent's monopoly rents.

Carrier-to-Carrier Performance Plan

The Merger Conditions Examination revealed numerous instances where SBC did not comply with the Carrier-to-Carrier Performance Plan required by the Merger Conditions.²³ In fact, Attachment A consists of 13 pages describing instances where SBC miscalculated performance measures, failed to report performance measures, failed to capture the underlying data needed to calculate performance measures, or unilaterally revised the business rules associated with certain performance measures.

¹⁸ Letter from Kathleen M. Marshall, Executive Director, Regulatory & Policy, Advanced Telecom Group, Inc. to Radhika Karmarkar, Deputy Division Chief, Enforcement Bureau, FCC, December 29, 2000.

¹⁹ Report of Management on Compliance with the Merger Conditions, September 4, 2001, page 10.

²⁰ Merger Conditions Examination, page 5.

²¹ Gilbert Declaration at ¶ 8.

²² Report of Management on Compliance with the Merger Conditions, September 4, 2001, page 10.

²³ Merger Conditions Examination, page 4.

In the Merger Order, the Commission concluded that the performance plan and underlying metrics would provide useful tools to competitive carriers seeking redress for SBC's discriminatory conduct. Specifically, the self-executing performance penalties could subject SBC to additional liability, because "failing either to satisfy the underlying obligation or to make timely voluntary payments will subject the Applicants to potential liability in the same way SBC/Ameritech would be liable for violating any other Commission order, rule, or regulation."²⁴ The Commission thus viewed the plan and associated metrics as vital gauges of SBC's compliance with the Merger Conditions and its other legal obligations. Of course, the value of the Carrier-to-Carrier Performance Plan depends on the accuracy and completeness of the data SBC collects and reports; without reliable data, the Carrier-to-Carrier Performance Plan will not "generate valuable information for regulators and competitors for use in implementing and enforcing the Communications Act."²⁵

As demonstrated by the findings from the Merger Conditions Examination, SBC's data collection and reporting efforts are significantly flawed, thus undermining the effectiveness of this Merger Condition, since carriers and regulators are unable to determine whether SBC is discriminating against competing carriers. Particularly troubling is the fact that SBC was fined \$88,000 in May by the Enforcement Bureau for an identical violation.²⁸

It is important to differentiate SBC's earlier reporting errors from those described in the latest Merger Conditions Examination. Whereas the earlier violations only affected seven of SBC's in-region states, the current reporting errors affect the entire SBC region. Also, whereas the earlier violations had no impact on SBC's monthly voluntary payments to the U.S. Treasury, the errors described in the most recent Merger Conditions Examination did influence the size of these payments. Most troubling is the fact that SBC only will be able to correct these reporting errors on a prospective basis because SBC now claims that it cannot retrieve the underlying data needed to restate the performance measures. This is in spite of the fact that the Merger Conditions clearly require SBC to maintain this data for two years.²⁹ In short, SBC has harmed its competitors two times over. First, SBC's substandard wholesale performance made it more difficult, if not impossible, for competitors to meaningfully compete in local markets. Second, SBC's failure to implement adequate internal processes and controls

²⁴ Merger Order at ¶ 413.

²⁵ Merger Order at ¶ 428.

²⁸ In the Matter of SBC Communications, Inc. Apparent Liability for Forfeiture, File No. EB-00-IH-0432, released May 29, 2001. ("Performance Measures Forfeiture Order")

²⁹ "For 24 months following submission of the final audit report, the Commission and state commissions in the SBC/Ameritech States shall have access to the working papers and supporting materials of the independent auditor at a location in Washington, D.C. that is selected by SBC/Ameritech and the independent auditor." Merger Conditions, at ¶ 66(g).

over its collection and calculation of wholesale performance data makes it impossible for competitive carriers to obtain remedies for SBC's discriminatory treatment under the Carrier-to-Carrier Performance Plan. Given the greater competitive significance of SBC's latest violations, and the fact that the Enforcement Bureau's earlier \$88,000 forfeiture clearly provided SBC little incentive to implement adequate internal processes and controls, CompTel urges the Commission to impose a far more significant penalty on SBC for the instances of material noncompliance described in the Merger Conditions Examination.

Further, SBC's continuing failure to maintain the underlying data required to calculate wholesale performance measures implicates more than simply violations of the Merger Conditions, and requires sanctions beyond those that can be imposed by the Commission. In order to maintain the integrity of and compliance with its rules and orders, which SBC continues to flout, CompTel and ATG urge the Commission to refer this matter to the U.S. Attorney's office for criminal prosecution under Section 501 of the Communications Act. SBC's continued failure to implement the necessary internal controls to ensure compliance with the Merger Conditions clearly constitutes a willful omission that should be subject to criminal penalties, including a fine or imprisonment, under Section 501.

CompTel also is concerned that SBC has ignored guidance from the FCC concerning the calculation of its voluntary payments to the U.S. Treasury. On December 11, 2000, Carol Matthey, Deputy Chief of the Common Carrier Bureau, sent a letter to SBC concerning the manner in which the company must calculate its voluntary payments to the U.S. Treasury for failure to meet wholesale performance targets.³⁰ Among other issues, the letter stated that there is no "cap" on the extent to which SBC misses a performance benchmark. As stated in the letter, "capping this factor, which could exceed 100% in cases where SBC seriously underperforms, would be inconsistent with the Commission's objective to provide an incentive to SBC to provide excellent services to CLECs."³¹ After reviewing performance data for the months October 2000 through February 2001, it is clear that SBC unilaterally imposed a 100 percent cap, contrary to the directives of Ms. Matthey's December 11, 2000 letter.³² This calculation error understates the size of SBC's voluntary payments to the detriment of CLECs that have been harmed by SBC's unsatisfactory performance. If the Merger Conditions are to have any pro-competitive impact, the Commission must not allow SBC to effectively thumb its nose at Commission orders.

In summary, CompTel and ATG urge the Commission to impose appropriate sanctions for any violations from the Merger Conditions to deter future violations. These violations have a competitively significant effect on CLECs, as demonstrated by the attached declarations from ATG. Most importantly, these violations were uncovered

³⁰ Letter from Carol Matthey, Deputy Chief, Common Carrier Bureau, FCC, to Sandra Wagner, Vice President-Federal Regulatory, SBC Telecommunications, Inc., DA 00-2459, December 11, 2000.

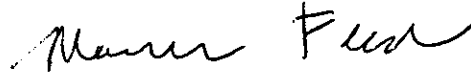
³¹ *Id.*, page 2.

³² Letter from Joseph T. Hall, Assistant Bureau Chief, Management, Common Carrier Bureau, FCC to Elizabeth Festa, Bridge News, July 12, 2001.

through an independent third-party examination, and cannot be explained away as accusations resulting from a carrier-to-carrier dispute. As such, if the Commission fails to take appropriate enforcement action, it will diminish its credibility concerning merger reviews specifically, and enforcement matters generally.

Please contact the undersigned should you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Maureen Flood", written in a cursive style.

Maureen Flood
Director, Regulatory and State Affairs

CC: Carol Matthey
Anthony Dale
Mark Stone
Brad Berry
Radhika Karmarkar
Maureen Del Duca

Declaration of Chris Gilbert

I, Chris Gilbert, hereby state as follows:

1. I am Director of Cost Assurance for Advanced TelCom Group, Inc. ("ATG"). I have held this position since July 2001. I have 5 years of experience working with the costs of leased Incumbent Local Exchange Carrier services.
2. In the capacity of Director I am responsible for the cost validation of leased services with respect to all Incumbent Local Exchange Carriers, including SBC Communications, Inc.'s local exchange providers, Pacific Bell and Nevada Bell telephone companies.
3. Both Pacific and Nevada Bell Telephone Companies have failed to discount ATG orders of Integrated Services Digital Network Digital Subscriber Line ("IDSL") as required under the Merger Conditions set forth in the Federal Communications Commission's Order approving the SBC/Ameritech Merger.
4. In July 2000 ATG first notified Pacific Bell Telephone Company that ATG was not receiving the 25% Advanced Services discount applicable to its IDSL orders. ATG attached a spreadsheet with its notice that identified the specific circuits and the amount each circuit was over-charged. The spreadsheet also outlined the correct charges after receiving the 25% Advanced Services discount. On July 17, 2000 Pacific Bell responded to ATG, stating that IDSL loops and digital loops do not receive the 25% discount. See Attachment A. Thereafter, ATG has continued to pursue its dispute with Pacific Bell Telephone Company over the proper application of the 25% Advanced Service discount. At or about the time that Ernst & Young LLP submitted its September 2001 audit of SBC Communications Inc.'s compliance with the Merger Conditions, ATG re-submitted its dispute over improper application of the 25% Advanced Service discount for Advanced Services loops ordered in Nevada. ATG attached a spreadsheet to its notice of disputed Nevada Bell Telephone Company charges, which identified the specific circuits and the amount each circuit was over-charged along with the correct amount that ATG asserts should have been billed for each circuit with the application of the 25% Advanced Service discount.
5. The total amount ATG has been overcharged for failure to apply the 25% Advanced Services discount to IDSL loops ordered from Pacific Bell Telephone Company in California is approximately \$48,178.49 for the period covering June, 2000 through October, 2001. This amount includes over charges on both marginal recurring charges and non-recurring charges. The amount does not include the charges for services between the effective date of November 1999 through May 2000.

6. The total amount ATG has been overcharged for failure to apply the 25% Advanced Services discount to IDSL loops ordered from Nevada Bell Telephone Company in Nevada is approximately \$14,000 for the period covering September, 2000 through October, 2001. This amount includes over charges on both marginal recurring charges and non-recurring charges. The amount does not include the charges for services between the effective date of November 1999 through October 2000.
7. To date, both Pacific and Nevada Bell Telephone Companies have continued to reject ATG's request to receive the 25% Advanced Service Discount for its IDSL loop orders as required under the Merger Conditions.
8. In addition, ATG has been over billed for collocation floor space at Nevada Bell Telephone Company's Sparks, Nevada Central Office (SPRKNV11). ATG has been over charged \$347.16 per month since July 2000. In July 2001 ATG notified Nevada Bell Telephone Company of the over charge. Along with its notice, ATG attached a spreadsheet that identified the over-charge for each month it occurred and the total amount over charged at \$4513.04. To date, Nevada Bell Telephone Company has continued to over-charge ATG for collocation space at SPRKNV11 and has not credited ATG's account for the previous months' over-charges. Attachment B provides the relevant Nevada Bell Telephone Company Tariff pages out of which ATG purchased collocation services during the period identified above along with a sample bill to ATG.
9. Along with the amounts over-charged ATG has also had to invest numerous man hours identifying the over-charges, preparing spreadsheets to support our disputes and corresponding with Pacific and Nevada Bell Telephone Companies in an effort to obtain credits due. Such time and effort would be better spent in providing telecommunications services to customers and competing with SBC in the provision of those services.

I hereby declare under penalty of perjury that the foregoing is true and correct.


Chris Gilbert

December 12, 2001

Maureen Flood

From: Kate Marshall [kmarshall@atgi.net]
Sent: Thursday, January 03, 2002 10:46 AM
To: mflood@comptel.org
Subject: FW: ATG & June dispute re ISDN/IDSL
Importance: High

ATTACHMENT A

-----Original Message-----

From: Diane Facundo [mailto:dfacundo@atgi.net]
Sent: Friday, November 16, 2001 8:21 AM
To: Kate Marshall
Cc: Chris Gilbert
Subject: FW: ATG & June dispute re ISDN/IDSL

Kate,

Chris forwarded your e-mail requesting any info regarding the IDSL discount. As far as I can tell from this response and Pac Bell's billing, they consider ISDN and IDSL one and the same.

I will continue to forward information over the next few days as I come across it. I will also be forwarding the amounts we were billed for the NRC and MRC on these circuits.

Please let me know if you need any other information and I will be happy to get it for you.

Dianne

-----Original Message-----

From: LEIGHS, HOLLY A (PB) [mailto:HALEIGH@msg.pacbell.com]
Sent: Monday, July 17, 2000 1:07 PM
To: 'dfacundo@atgi.net'
Cc: MCCLAIN, BRENDA L (PB)
Subject: ATG & June dispute re ISDN/IDSL

Dianne:

Here is Pacific Bell's response regarding your first issue (UBQU loops - ISDN/IDSL) -

The monthly recurring charge for 2 wire Digital ISDN/xDSL capable links is \$11.70 without the ISDN option and \$16.14 with the ISDN option per Appendix A of the OANAD amendment.

The ISDN/IDSL(UBQ)loops do not receive the 25% discount. This discount only applies to adsl, hdsi and sdsl - analog loops. Digital loops do not receive that discount.

An add'l response will be provided for your remaining issues.

Regards,

Holly

-----Original Message-----

From: Dianne Facundo [mailto:dfacundo@atgi.net]

Sent: Tuesday, July 11, 2000 4:24 PM

To: haleigh@pacbell.com

Cc: Chris Gilbert

Subject: June dispute

Please find the attached spreadsheet with the disputes for June's recurring charges.

Most everything seems to be now billing at the correct rate with the exception of the circuits with IDs including the NC codes UBQU. From the research I have conducted, the NC code UB can be for either ISDN or IDSL (please refer to tab 8, page 32 of Pac Bell's Carrier Coding Guide). The MRC's for these circuits include USOC XSLRX and XSL1X, both USOCs are for IDSL service. We are being charged an additional \$4.44 charge for an ISDN option on these USOCs, which we should not be charged. We are overcharged a monthly rate of \$16.14, instead of the correct rate of \$11.70. We are also not receiving the 25% Advanced Services discount applicable to these circuits. The attached spreadsheet outlines the correct charges and amounts disputed for June.

I have also disputed amounts on specific circuits, you may find the reasons for these disputes under the "issues" tab of the attached spreadsheet.

Please let me know if you have any questions.


Dianne Facundo
Revenue Assurance Analyst
Advance Telcom Group
110 Stony Point Rd, Second Floor
Santa Rosa, CA 95401
707-284-5174
Fax 707-284-5001

Declaration of Louie Ruiloba

I, Louie Ruiloba, hereby state as follows:

1. I am Collocation Engineer for Advanced TelCom Group, Inc. ("ATG"). I have held this position since July of 2000. I have 4 years of experience working with Pacific Bell and their application processes.
2. In the capacity of Collocation Engineer I am responsible for submitting all applications requesting collocation at central offices of Incumbent Local Exchange Carriers, including SBC Communications, Inc.'s local exchange providers, Pacific Bell and Nevada Bell telephone companies.
3. As part of my responsibilities I routinely visit the website of Pacific Bell Telephone Company to determine whether collocation space in various central offices in which ATG is interested in collocating has been exhausted. I then use such information in deciding whether to process and submit an application requesting collocation space. If a particular central office in which ATG is interested in collocating is not listed as "full" on Pacific Bell Telephone Company's website, I then assume that the central office has space available and I will prepare and submit an application requesting collocation space.
4. In June 1, 2000 my department visited the Pacific Bell Telephone Company's website to determine whether the Bishop Ranch central office (BSRNCA70) had available collocation space. The Bishop Ranch Central Office was not listed as in a state of exhaust. Thereafter, ATG processed and submitted an application for collocation space in the Bishop Ranch Central Office along with a check for \$6093.87 to cover the application fee. On June 18, 2000 Pacific Bell Telephone Company responded by letter stating that the Bishop Ranch Central Office was exhausted of collocation space. During a subsequent phone call with Pacific Bell Telephone Company we were informed by Pacific Bell Telephone Company that there was a waiting list of applicants and that the Bishop Ranch Central Office has been in a state of exhaust for some time. My application fee was returned to me on June 21, 2001.
5. To my knowledge, to date, Pacific Bell Telephone Company has not posted the Bishop Ranch Central Office on its website as a Central Office that has reached exhaust.

I hereby declare under penalty of perjury that the foregoing is true and correct.



Louie Ruiloba
12-11-01
Date